IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6780 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SATISHKUMAR R PATEL

Versus

DDO BARODA

Appearance:

Mr.Navin Pahwa for MRS SANGEETA N PAHWA for Petitioner

MR SP HASURKAR for Respondent No.3.

Respondents nos.1 and 2 served.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 20/04/2000

ORAL JUDGEMENT :

Rule was issued by this court on 7.4.2000 making returnable on 13.4.2000. Earlier this Court had issued notice on 20.9.1999, which was made returnable on 8.10.1999. The respondents were served with the same.

At the time of issuance of rule, direct service was permitted and an affidavit is filed to the effect that the same is served to the respondents. Thus, respondents nos.1 and and stand duly served while for respondent no.3, Mr.S.P. Hasurkar, learned Additional Government Pleader appears and on his behalf, Mr.Digant P. Joshi, learned Asstt. Govt. Pleader is present before this Court.

2. The present petition is filed by the petitioner seeking appointment on compassionate grounds. It is the case of the petitioner that by an order dated 24.5.1999, which is at Annexure 'A', page 9, the petitioner is denied appointment on compassionate grounds. It is stated in the said order that the application of the petitioner cannot be considered by the authorities as the petitioner is residing separately from the family of the deceased. A draft amendment was moved on 20.9.1999 by the learned advocate for the petitioner, which was granted on the same day and was carried out on 21.9.1999. Para 5(a) thereof reads as under :

"5(a) The petitioner states that the petitioner does not have the copy of the application form filled up by him for compassionate appointment. The petitioner states that when the petitioner filled up the form for compassionate appointment, the petitioner was staying with his mother and in the form/ application of the compassionate appointment, the petitioner has stated the address of his mother since the petitioner was and the petitioner is staying with his mother."

3. An affidavit is filed on behalf of respondent no.3. It is mentioned in para 5 of the said affidavit that the "the petitioner's case was considered for compassionate appointment and it was found on investigating the factual circumstances of the case of the petitioner that at the time of death of his father, he was living separate from the family."

In para 6 of the said affidavit it is stated that, ".. .. since the petitioner was living separate at the time of death of his father, it cannot be said that the petitioner is surviving bread winner for the family of the deceased." It is also stated that , "The fact that the petitioner is now started living with joint family, would not entitle him to claim appointment on the compassionate ground."

4. Respondent no.3 has also relied upon a letter

dated 15.9.1997 addressed to the Taluka Development Officer from the office of the Mamlatdar, Sankheda, wherein it is mentioned that the name of the present petitioner, S.R. Patel is at sl. no.5 in the ration card and said name is deleted on the ground that, "he has gone out of station." Said deletion had taken place on 5.12.1994. Thereafter, it is further mentioned in the same letter that the name of the present petitioner, S.R. Patel is added in the said ration card at sl. no.6 on 21.12.1995.

5. The learned advocate for the petitioner submitted that the petitioner had made a representation to respondent no.1 on 10.6.1999 wherein he had stated that the petitioner is staying with the family of his deceased father and that his family has no other source of income than the pension of Rs.6000/- per year. The petitioner had also annexed a certificate from Talati/ Mantri with that representation show that the petitioner is staying with the mother and the family. The petitioner had also annexed a copy of the ration card and an affidavit of the mother of the petitioner to show that the petitioner is staying with the mother and the family.

6. Looking to the facts stated herein the present petition is allowed and the authorities are directed to consider the case of the petitioner on the basis that the present petitioner is residing with his family, more particularly, in light of the certificate issued by the Talati/Mantri, the affidavit of the mother and the ration card which are produced along with the application/ representation dated 10.6.1999. It is a matter of common knowledge that there can be more than one reason for a grown up son to start residing separately, but in the event of sad demise of the father, the son can always revert back to the family and support his mother. The authorities ought not to have taken such a technical view and should have considered the application of the petitioner for appointment on compassionate grounds by taking the aforesaid facts of the case into consideration. Mr.D.P. Joshi for the respondent authorities is not in a position to support the action of the respondents based on a technical stand taken by the authorities in the matter.

7. The authorities shall consider the case of the petitioner latest by 30.6.2000. The authorities shall also communicate the decision to the petitioner by a Registered Post A.D. letter. Rule is made absolute to the aforesaid extent. In the facts, no order is passed for costs of this petition. Direct service is permitted.

(Ravi R. Tripathi, J.)

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